Supreme Court, U.S.
FILED
MAY 5 1995
OFFICE OF THE CLERK

No. 94-1663

In The

Supreme Court of the United States

October Term, 1994

PATRICK BERRYMAN AND JUDITH BERRYMAN,

Petitioners,

vs.

CREDIT ADJUSTERS,

Respondent.

Petition For Writ Of Certiorari
To The Minnesota Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRENT ELIOT WALZ
Counsel of Record
503 Jefferson Street South
P.O. Box 647
Wadena, MN 56482-0647
(218) 631-2505
MN Attorney I.D. #217293

MR. RODNEY SCHLAUGER
Attorney for Respondent
818 St. Joe Street
P.O. Box 2670
Rapid City, SD 57709-2670
MN Attorney I.D. #217979

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether a South Dakota District Court properly exercised personal jurisdiction over the Petitioners such that Petitioners' motion to stay execution and vacate the resulting foreign judgment filed in Minnesota was properly denied.

LIST OF PARTIES

The caption of this Brief in Opposition contains the proper names of all parties to this matter. Credico, Inc., is the parent company of Respondent Credit Adjusters.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES iv

JURISDICTION 1

STATUTES INVOLVED 3

STATEMENT OF THE CASE 4

SUMMARY OF ARGUMENT 6

ARGUMENT 6

I. THE MINNESOTA COURT OF APPEALS' DECISION IS CONSISTENT WITH FEDERAL LAW AND IS BASED UPON THE NUMEROUS AND SIGNIFICANT CONTACTS OF THE PETITIONERS WITH THE STATE OF SOUTH DAKOTA 6

II. PETITIONERS' CHOICE OF LAW ANALYSIS RAISES A STATE LAW QUESTION WHICH IS ALREADY WELL SETTLED AND IS NOT THE PROPER SUBJECT OF THIS COURT'S JURISDICTION 9

CONCLUSION 11

TABLE OF AUTHORITIES

Page

UNITED STATES CODE

28 U.S.C. § 1257(a) 1, 2, 3, 9

MINNESOTA STATUTES

Minn. Stat. § 548.27 4

Minn. Stat. § 548.28 4

SOUTH DAKOTA STATUTES

S.D.C.L. § 15-7-2(1) 3

CASES

American Railway Express Company v. Levee, 263 U.S. 19, 68 L.Ed. 140, 44 S.Ct. 11 (1923) 2

Bacon v. Texas, 163 U.S. 207, 41 L.Ed. 132, 16 S.Ct. 1023 (1896) 2

Burger King v. Rudzewiez, 471 U.S. 462, 85 L.Ed.2d 528, 105 S.Ct. 2174 (1985) 6, 7, 8, 10

Chesapeake & O. R. Co. v. Mihas, 280 U.S. 102, 74 L.Ed. 207, 50 S.Ct. 42 (1929) 2

Cohen v. California, 403 U.S. 15, 29 L.Ed.2d 284, 91 S.Ct. 1780, *reh. den.* 404 U.S. 876, 30 L.Ed.2d 124, 92 S.Ct. 26 (1971) 2

Electro-Measure, Inc. v. Ewald Enter., Inc., 398 N.W.2d 85 (Minn. App. 1986), *pet. rev. den.* (Minn., March 13, 1987) 9

Marquette National Bank of Minneapolis v. Norris, 270 N.W.2d 290 (Minn. 1978) 9

TABLE OF AUTHORITIES – Continued

Page

McGee v. International Life Ins. Co., 355 U.S. 220, 2 L.Ed.2d 223, 78 S.Ct. 199 (1957) 8

Mellon v. O'Neil, 275 U.S. 212, 72 L.Ed. 245, 48 S.Ct. 62 (1927) 2

Michigan-Wisconsin Pipe Line Company v. Calvert, 347 U.S. 157, 98 L.Ed. 583, 74 S.Ct. 396, *reh. den.* 347 U.S. 931, 98 L.Ed. 1083, 74 S.Ct. 528 (1954) 2

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 62 L.Ed.2d 490, 100 S.Ct. 559 (1980) 7

SUPREME COURT RULES

Rule 10 ..... 6, 7

No. 94-1663

In The

Supreme Court of the United States

October Term, 1994

PATRICK BERRYMAN AND JUDITH BERRYMAN,

Petitioners,

vs.

CREDIT ADJUSTERS,

Respondent.

Petition For Writ Of Certiorari To The Minnesota Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Credit Adjusters respectfully prays that the Petition for Writ of Certiorari to the Minnesota Supreme Court be in all things denied.

JURISDICTION

Petitioners' jurisdictional statement is defective. They seek review of the decision of the wrong state court. Pursuant to 28 U.S.C. § 1257(a), final judgments or decrees rendered by "the highest court of a state in which a decision could be had" may be reviewed by the United

States Supreme Court by writ of certiorari. In this instance, Petitioners pray for a writ of certiorari to review an Order of the Minnesota Supreme Court. This Order, however, did not reach the merits of the federal question in this case, but rather merely denied Petitioners' request to have the Minnesota Supreme Court review the judgment rendered by the Minnesota Court of Appeals in this matter. Because the Minnesota Supreme Court declined to review this case and therefore did not pass upon a federal question, the judgment of the Minnesota Court of Appeals is the judgment of the highest state court for purposes of jurisdiction under 28 U.S.C. § 1257(a). See *Michigan-Wisconsin Pipe Line Company v. Calvert*, 347 U.S. 157, 98 L.Ed. 583, 74 S.Ct. 396, *reh. den.* 347 U.S. 931, 98 L.Ed. 1083, 74 S.Ct. 528 (1954); *American Railway Express Company v. Levee*, 263 U.S. 19, 68 L.Ed. 140, 44 S.Ct. 11 (1923). See also *Cohen v. California*, 403 U.S. 15, 29 L.Ed.2d 284, 91 S.Ct. 1780, *reh. den.* 404 U.S. 876, 30 L.Ed.2d 124, 92 S.Ct. 26 (1971); *Chesapeake & O. R. Co. v. Mihas*, 280 U.S. 102, 74 L.Ed. 207, 50 S.Ct. 42 (1929); *Mellon v. O'Neil*, 275 U.S. 212, 72 L.Ed. 245, 48 S.Ct. 62 (1927); *Bacon v. Texas*, 163 U.S. 207, 41 L.Ed. 132, 16 S.Ct. 1023 (1896).

The United States Supreme Court does not have jurisdiction pursuant to 28 U.S.C. § 1257(a) to review by writ of certiorari the Order of the Minnesota Supreme Court in this matter. The Petition for Writ of Certiorari should therefore be summarily dismissed.

STATUTES INVOLVED

U.S.C. § 1257(a)(b):

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

S.D.C.L. § 15-7-2(1):

Any person is subject to the jurisdiction of the courts of this state as to any cause of action arising from the doing personally, through any employee, through an agent or through a subsidiary, of any of the following acts:

(1) The transaction of any business within the state;

* * * .

See Resp. App. A1-2 for full citation.

STATEMENT OF THE CASE

Respondent Credit Adjusters obtained a default judgment against Petitioners Patrick Berryman and Judith Berryman in the Seventh Judicial District, Pennington County, State of South Dakota, on January 3, 1992. On February 28, 1994, Credit Adjusters filed the default judgment in Ramsey County District Court, Second Judicial District, State of Minnesota. Notice of Entry of Foreign Judgment was served upon the Berrymans that same day pursuant to the Minnesota Uniform Enforcement of Foreign Judgments Act, Minn. Stat. § 548.27 and Minn. Stat. § 548.28.

Thereafter, the Berrymans moved the District Court, Judge Mary Louise Klas presiding, to stay execution of judgment and vacate the foreign judgment. The Berrymans' motions were denied upon Order of the Court dated April 25, 1994. The Berrymans appealed the trial court decision to the Minnesota Court of Appeals, which affirmed the trial court's order in an unpublished opinion dated October 27, 1994, and filed November 8, 1994.

The Berrymans subsequently petitioned the Minnesota Supreme Court for discretionary review of the decision of the Minnesota Court of Appeals. The Berrymans' petition to the Minnesota Supreme Court was denied by Order dated January 9, 1995. The Berrymans' Petition for Writ of Certiorari to the Minnesota Supreme Court follows.

Respondent Credit Adjusters perceives a number of misstatements of fact in the Petitioners' Statement of the Case and Reasons for Granting Review. It should be made clear that there are no credit cards or mortgages involved

in this matter. The Petitioners did not assume a mortgage or other existing loan, and their contacts with the state of South Dakota were far greater than merely mailing a few loan payments to the South Dakota lender.

As set forth in the Minnesota Court of Appeals' decision below, the Petitioners:

(1) Negotiated with the South Dakota credit union regarding the price of the mobile home before purchasing it;

(2) Applied to the credit union for a loan to finance the purchase;

(3) Corresponded with the bank about insurance coverage for the mobile home;

(4) Signed a promissory note with the credit union which specified monthly payments over a period of 90 months;

(5) For approximately two years, sent monthly payments to the credit union;

(6) Defaulted on the promissory note and were sent a notice of default from the credit union; and

(7) Attempted to negotiate with their South Dakota lender a voluntary repossession of the mobile home.

See Petitioners' App. A4-5, A8-9. Based upon these numerous and significant contacts, the Minnesota Court of Appeals determined that the Petitioners had sufficient "minimum contacts" with the state of South Dakota. It is disingenuous for the Petitioners to suggest, as they do in

their Questions Presented, that this case involved only "payments mailed" as the basis for jurisdiction.

SUMMARY OF ARGUMENT

Petitioners have failed to demonstrate any special or important reasons for granting the Petition for Writ of Certiorari. In holding that the South Dakota District Court properly exercised personal jurisdiction over the Petitioners, the Minnesota Court of Appeals analyzed and applied the long line of United States Supreme Court decisions defining the parameters of Constitutional due process afforded non-resident defendants. Petitioners present no reasonable basis for overruling the *Burger King* decision. Petitioners' choice of law analysis raises a state law question, which is not within the jurisdiction of the United States Supreme Court. Petitioners' jurisdictional statement is defective and this Court is without jurisdiction to review the Order of the Minnesota Supreme Court in this matter. The Petition for Writ of Certiorari to the Minnesota Supreme Court should be denied.

ARGUMENT

I. THE MINNESOTA COURT OF APPEALS' DECISION IS CONSISTENT WITH FEDERAL LAW AND IS BASED UPON THE NUMEROUS AND SIGNIFICANT CONTACTS OF THE PETITIONERS WITH THE STATE OF SOUTH DAKOTA.

Rule 10 of the Supreme Court Rules sets forth the considerations governing review on writ of certiorari. A

petition for writ of certiorari will be granted only when there are special and important reasons, and the following criteria are listed in Rule 10.1(b)(c), as indicative of the character of reasons that will be considered:

> (b) when a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.
>
> (c) when a state court * * * has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way that conflicts with applicable decisions of this court.

The Minnesota Court of Appeals' decision in this matter was expressly based upon this Court's holding in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 62 L.Ed.2d 490, 100 S.Ct. 559 (1980) and *Burger King v. Rudzewiez*, 471 U.S. 462, 85 L.Ed.2d 528, 105 S.Ct. 2174 (1985). Petitioners have failed to make any showing that the Minnesota Court of Appeals' decision is in any way in conflict with the decisions of the United States Supreme Court, the United States Court of Appeals, nor any other state court of last resort. The Minnesota Court of Appeals' decision in this case is a straightforward application of the principles enunciated in the *Burger King* decision, and is based upon the significant quantity and quality of the Berrymans' contacts with the state of South Dakota.

Regarding "interstate contractual obligations" such as in this case, the United States Supreme Court in *Burger King* stated:

> [W]e have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities. * * * Thus where the defendant "deliberately" has engaged in significant activities within a state, or has *created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there*, and, because his actions are shielded by "the benefits and protections" of the forum's laws, it is presumptively not unreasonable to require him to submit to the burden of litigation in that forum as well.

Burger King, 471 U.S. at 473, 475-76, 105 S.Ct. at 2182, 2184, 85 L.Ed.2d at 541, 543 (citations omitted) (emphasis added).

The Berrymans deliberately chose to finance the purchase of their mobile home with a South Dakota bank, upon a promissory note which contemplated payments to be made to the bank in South Dakota over a period of 90 months. By their voluntary conduct, the Berrymans purposefully created a continuing obligation between themselves and a South Dakota resident, and thereby availed themselves of the privilege of conducting business in South Dakota. Further, the Berrymans' default on this promissory note formed the basis for the lawsuit brought against them in South Dakota. Therefore, the South Dakota cause of action against the Berrymans arose directly out of their contacts with South Dakota. See *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 2 L.Ed.2d 223, 78 S.Ct. 199, 201 (1957)) (where cause of action arises out of contacts, even one isolated transaction

may be sufficient). *See also Marquette National Bank of Minneapolis v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978). It does not offend traditional notions of fair play and substantial justice to expect the Berrymans to respond to a lawsuit on the promissory note in South Dakota.

II. PETITIONERS' CHOICE OF LAW ANALYSIS RAISES A STATE LAW QUESTION WHICH IS ALREADY WELL SETTLED AND IS NOT THE PROPER SUBJECT OF THIS COURT'S JURISDICTION.

Petitioners' second argument (under Section II) appears to raise a question of Minnesota state law, which is clearly a matter not within the jurisdiction of the United States Supreme Court pursuant to 28 U.S.C. 1257(a). Further, the analysis is well settled in Minnesota that:

> In determining whether the foreign court obtained personal jurisdiction [over a non-resident defendant], Minnesota courts apply the law [the long arm jurisdiction statute] of the foreign state as construed by the courts of that state.

Electro-Measure, Inc. v. Ewald Enter., Inc., 398 N.W.2d 85, 88 (Minn. App. 1986), *pet. rev. den.* (Minn., March 13, 1987).

The Minnesota Court of Appeals applied this analysis, and in its opinion acknowledged that both the South Dakota jurisdictional statute, as well as the Minnesota jurisdictional statute, placed no more restrictive limits on the exercise of personal jurisdiction over non-resident

defendants than does the United States Constitution. *See* Petitioners' App. A6-7. Therefore, the primary consideration in this matter was the sufficiency of the due process minimum contacts between the Berrymans and the state of South Dakota. The Minnesota Court of Appeals cited and applied the long line of United States Supreme Court decisions defining the parameters of constitutional due process for the exercise of personal jurisdiction, as discussed above. Petitioners have failed to make any reasonable showing why this Court should overrule the *Burger King* decision and the long line of cases leading up to it.

CONCLUSION

Respondent respectfully requests that the United States Supreme Court deny the Petition for Writ of Certiorari to the Minnesota Supreme Court. Petitioners' jurisdictional statement is flawed and Petitioners have failed to demonstrate any special or important reason to grant the Petition for Writ of Certiorari. The Minnesota Court of Appeals' decision in this matter was a well reasoned application of established constitutional principles of due process in the context of *in personam* jurisdiction over non-resident defendants.

Respectfully submitted,

KENNEDY & NERVIG

BRENT ELIOT WALZ
503 Jefferson Street South
P.O. Box 647
Wadena, MN 56482-0647
(218) 631-2505
MN Attorney I.D. #217293
Counsel of Record

BANGS, MCCULLEN, BUTLER,
FOYE & SIMMONS

MR. RODNEY SCHLAUGER
818 St. Joe Street
P.O. Box 2670
Rapid City, SD 57709-2670
MN Attorney I.D. #217979
Attorney for Respondent

RESPONDENT'S APPENDIX

S.D.C.L. 15-7-2. Any person is subject to the jurisdiction of the courts of this state as to any cause of action arising from the doing personally, through any employee, through an agent or through a subsidiary, of any of the following acts:

(1) The transaction of any business within the state;

(2) The commission of any act which results in accrual within this state of a tort action;

(3) The ownership, use, or possession of any property, or of any interest therein, situated within this state;

(4) Contracting to insure any person, property, or risk located within this state at the time of contracting;

(5) Entering into a contract for services to be rendered or for materials to be furnished in this state by such person;

(6) Acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as executor or administrator of any estate within this state;

(7) Failure to support a minor child residing in South Dakota;

(8) Having sexual intercourse in this state, which act creates a cause of action for the determination of paternity of a child who may have been conceived by that act of intercourse;

(9) With respect to any action for divorce, separate maintenance or spousal support the maintenance in this state of a matrimonial domicile at the time the claim arose or the commission in this state of an act giving rise to the claim, subject to the provisions of § 25-4-30;

(10) Entering into negotiations with any person within the state with the apparent objective of contracting for services to be rendered or materials to be furnished in this state;

(11) Commencing or participating in negotiations, mediation, arbitration or litigation involving subject matter located in whole or in part within the state;

(12) Doing any act for the purpose of influencing legislation, administrative rule-making or judicial or administrative decision-making by any local, state or federal official whose official function is being performed within the state, providing that an appearance to contest personal jurisdiction shall not be within this subsection;

(13) The commission of any act which results in the accrual of an action in this state for a violation of the antitrust laws of the United States or chapter 37-1.